



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CCO - 177791

PRELIMINARY RECITALS

Pursuant to a petition filed on November 5, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services regarding Child Care (CC), a hearing was held on December 5, 2016, by telephone.

The issue for determination is whether the county agency correctly calculated an overpayment of childcare expenses paid on behalf of the petitioner in the amount of \$769.00 from March 12, 2016 through May 31, 2016 due to a failure to report a change in household income.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: [REDACTED]
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Kristin P. Fredrick
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County. The petitioner is married to [REDACTED] and they are the parents of two minor children.
2. On January 15, 2016, the petitioner completed an interview for child care assistance. At that time petitioner reported the household included her husband and two minor children. The household was determined eligible for child care assistance.
3. In March 2016 the petitioner's husband moved out of the home. The petitioner's husband moved back in with the family by the end of May 2016. Neither the petitioner nor her husband reported this change to the county agency.
4. The petitioner received child care benefits in the amount \$769 from March 12, 2016 through May 31, 2016.
5. On September 16, 2016, the county agency issued a Child Care Overpayment Notice to the petitioner advising the petitioner that she was not eligible for child care benefits from March 12, 2016 through May 31, 2016 in the amount of \$769.00 due to a failure to report a change in earned income.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments is mandated regardless of fault. Wis. Admin. Code, §DCF 101.23, §DCF 201.04(5)(a); *Wisconsin Shares Child Care Subsidy Policy Manual*, §3.5.2. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). An assistance group with gross income level exceeding 200% of the Federal Poverty Level (FPL) is not eligible for child care subsidy benefits. *Wisconsin Shares Child Care Subsidy Policy Manual*, §1.5.1.2.

Assistance Group is defined to include any of the following individuals who reside in the same household:

- An individual who is a parent caring for a child
- The individual's dependent children including 18 year olds who live at home, attend high school, and are expected to graduate by their 19th birthday
- Any dependent children of the individual's dependent children
- The individual's spouse or any non-marital co-parent
- The spouse's dependent children
- The non-marital co-parent's dependent children

Id. at §1.4.1.

Participants in the Wisconsin Shares program are required to report the following changes by the 10th day after the change has occurred:

- A change of residence address
- A change in mailing address
- A change in the household members, including when someone moves into or out of the home
- A change in relationship with a child in the household (i.e. adoption, paternity establishment or legal parentage, foster care, subsidized guardianship, interim caretaker, or kinship care)
- A change in marital status
- A change in the shared placement schedule of a child
- A change in monthly income, whether earned or unearned, (for example: a change in rate of pay or a change in the number of hours worked) which increases monthly income by \$250.00 or decreases the monthly income by \$100.00 or any increase in income that raises the child care Assistance Group's monthly gross income above 200% of Federal Poverty Level (FPL)
- A change in child support and/or a change in family support that increases the aggregate amount of the support received for all household members to greater than \$1,250.00 per month
- A change in an individual's approved activity
- A change in need for child care
- A change in child care providers
- The child is no longer attending the child care provider

Wisconsin Shares Child Care Subsidy Policy Manual, §1.9.1. An overpayment, which is the result of not timely reporting a change that affects eligibility such as household composition or income not being accurately reported is considered effective the date of the change. *Id.*, §3.5.1.

The county agency is mandated to recover overpayments when benefits are received when recipients are not eligible to receive them, including when:

1. An authorized amount of child care would have been less due to inaccurate reporting of income. Consider the excess amount paid for the client as the overpayment.
2. The client was absent from a W-2 approved activity without good cause, while the child was in care. (The W-2 Financial and Employment Planner (FEP) determines good cause for absence from W-2 activities on a case by case basis.)
3. The client would not have been eligible if income, household composition, or the need for child care had been accurately reported.
4. A change in income, the need for child care, or household composition was not reported within 10 days of the change and the change would have resulted in a lesser benefit received.
5. The worker did not timely act upon reported information or entered incorrect information to the CARES system that resulted in an eligibility related overpayment.

Id. at §3.5.1.

In the present matter, the county agency presented evidence confirming that the petitioner's husband resided at a different address from March until May 2016. It is undisputed that the petitioner's husband lived at a different address from the rest of the family for those three months and that neither the petitioner nor her husband reported this change to the county agency. However, once learning of the change in June 2016, the county agency did not re-determine the household's eligibility for the three month period that the petitioner's husband moved out. The county agency presented no evidence or testimony that the petitioner's household would have received lesser benefits had the change been reported. In addition, the county agency did not submit any evidence of an overpayment worksheet to establish how the overpayment was calculated or the amount of child care benefits the household should have been eligible had the change been reported. Instead, the county agency appears to take the position that the mere failure to report the change resulted in ineligibility for any child care benefits.

The *Wisconsin Shares Child Care Subsidy Policy Manual* does not authorize the county agency to recoup all benefits received merely as a result of a failure to report a change in income or household composition. Rather, in order to amount to an overpayment, the change must result in complete ineligibility or eligibility for a lesser benefit than what was received. The failure to report a change in address does not automatically result in overpayment. The county agency must still determine whether the change in circumstances results in a change in the amount of benefits that the recipient is entitled to receive. The overpayment calculation would then be the difference between the amount of child care payments originally issued and the amount the recipient was entitled to receive if the change had been reported timely. The county agency did not present any evidence or testimony to establish such a determination or calculation had occurred in the present matter. Therefore, there is no basis for the child care expense overpayment claim under the policies of the Wisconsin Shares Program.

CONCLUSIONS OF LAW

The county agency did not correctly determine an overpayment of child care expenses as against the petitioner.

THEREFORE, it is

ORDERED

This matter is remanded to the county agency to cease collection of any claim for overpayment of child care benefits from March 12, 2016 through May 31, 2016 in the amount of \$769.00. Within ten days of this Order the county agency should calculate the amount of child care benefits that the petitioner would have been entitled to receive during the period of March 12, 2016 through May 31, 2016 based upon the household income and composition now known during that time period. If the county agency determines that an overpayment exists because the petitioner received more child care benefits than she was entitled to receive, then the agency should send out to the petitioner new notices of overpayment with a completed Child Care Overpayment Worksheet (DCF-F-452-E), or an equivalent document, showing the calculation and the amount actually overpaid.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

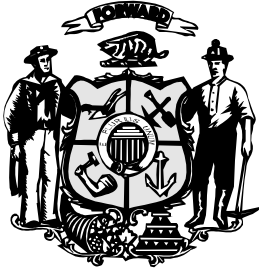
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of January, 2017

\s _____
Kristin P. Fredrick
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 9, 2017.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud